

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PRO-FOOTBALL, INC.,

Plaintiff-Appellant,

v.

AMANDA BLACKHORSE, MARCUS
BRIGGS-CLOUD, PHILLIP GOVER,
JILLIAN PAPPAN, and COURTNEY
TSOTIGH,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Intervenor-Appellee.

Appeal No. 15-1874

**MOTION FOR (1) LEAVE TO FILE A DEFERRED APPENDIX
AND (2) MODIFICATION OF THE BRIEFING ORDER**

Plaintiff-Appellant Pro-Football, Inc. (“PFI”) respectfully moves the Court for: (1) leave to file a deferred appendix in this appeal pursuant to Fed. R. App. P. 30(c); and (2) modification of the briefing order entered in this appeal [Doc. 3]. Pursuant to Fourth Circuit Local Rule 27(a), PFI states that counsel for all other parties have been informed of the intended filing of this motion, and that all other parties consent to the relief requested in this motion.

1. This case arises from the Trademark Trial and Appeal Board’s (“TTAB”) decision, over a dissenting opinion, to schedule for cancellation under

Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), the registrations of several trademarks of the Washington Redskins football team on the ground that the trademarks disparaged Native Americans at the times the trademarks were originally registered in 1967, 1974, 1978, and 1990. PFI challenged the TTAB's decision in a civil action in the U.S. District Court for the Eastern District of Virginia (Gerald Bruce Lee, J.) pursuant to 15 U.S.C. § 1071(b). In a similar case twelve years ago in the U.S. District Court for the District of Columbia, the court held on summary judgment that the Redskins' trademarks were not disparaging as of the times they were originally registered and therefore that the TTAB's cancellation decision must be reversed. *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 99 (D.D.C. 2003) (Kollar-Kotelly, J.), *aff'd on other grounds*, 565 F.3d 880 (D.C. Cir. 2009). Nonetheless, in the decision below, the U.S. District Court for the Eastern District of Virginia granted summary judgment that the marks *were* disparaging and therefore that the TTAB's cancellation decision may be enforced.

2. The Defendants in PFI's action in the district court, Appellees in this Court, are the individuals who brought the proceeding at the TTAB seeking cancellation of the Redskins' trademarks. The United States intervened in the district court to defend the constitutionality of Section 2(a).

3. The record before the TTAB was voluminous. In addition, in the district court below, the parties supplemented the TTAB record. With those

supplements, the record before the district court on the cross-motions for summary judgment consisted of thousands of pages.

4. This Court has entered a briefing order for this appeal calling for the appendix and PFI's opening brief to be filed by September 15, 2015; response brief(s) to be filed by October 19, 2015; and PFI's reply brief to be filed within 14 days of service of any response brief(s). [*See* Doc. 3].

5. Given the size of the record on appeal, and to prevent unnecessary waste of judicial resources, PFI seeks leave to file a deferred appendix pursuant to Fed. R. App. P. 30(c) so that the parties can provide the Court with an appendix that contains only the portions of the record that are relevant to PFI's appeal.

6. In addition, the Court's operative briefing order, which was issued on August 6, 2015, anticipates that PFI's opening brief be filed by Tuesday, September 15, 2015. This time period not only encompasses the Labor Day holiday, but also PFI's counsel's other pre-existing work commitments and pre-arranged vacation plans. PFI therefore submits that good cause exists for modifying the briefing schedule, and respectfully requests a modest extension of the deadline to file its opening brief by 10 days, to September 25, 2015.

7. To preserve the balance of time afforded to the parties, and in the interest of fairness, PFI proposes the following briefing schedule for this appeal:

- PFI's opening brief due: **Friday, September 25, 2015**
- Response brief(s) due: **Monday, November 9, 2015**
- PFI's reply brief due: **Friday, December 4, 2015**
- Deferred appendix due: **Tuesday, December 15, 2015**
- Final form briefs due: **Tuesday, December 22, 2015**

All parties consent to the filing of a deferred appendix, as well as to the briefing schedule set forth above.

CONCLUSION

PFI respectfully requests that the Court grant PFI's motion for: (1) leave to file a deferred appendix; and (2) modification of the briefing order, as set forth above.

Dated: August 11, 2015

Respectfully submitted,

s/ Robert L. Raskopf

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2015, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Date: August 11, 2015

s/ Robert L. Raskopf